must be read in the sense as contended by Mr. Karpal Singh, it is not necessary for me to decide and I express no firm opinion on it. But the failure, if any, to observe in full this section cannot, in my view, invalidate the order made by the Minister under section 4(1).

The second ground is that the Minister was acting *mala fide*, in signing the new order. With the greatest of respect, having regard to the facts of the case, I cannot see how the question of *mala fides* can arise. An order was made originally for the detention of this particular person. It was for some reason or other tampered with by being made to bear a date which would not appear to be the date intended by the Minister for the commencement of the detention of the detenu. The relevant authorities now concede that the original order might well be defective but for the same reasons as moved the then Minister to make the first order, the present incumbent has made another similar order. With the greatest of respect, I am therefore unable to see how any question of bad faith can be raised on this fact. It is always open to the authorities to cure a defective order in the proceedings. If authority is required, reference can be made to the decision of the Supreme Court of India in *Naranjan Singh* v. *State of Punjab*[3] at page 108 relied on by the learned Legal Adviser.

"(8) It is contended by the Advocate General of the Punjab that the decision reported in *Basant Chandra* v. *Emperor*, 1945 F.C.R. 81 is clear authority in support of the validity of the aforesaid order. On essentially similar facts, the court laid down two propositions both of which have application here. (1) Where an earlier order of detention is defective merely on formal grounds, there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the courts, and (2) If at any time before the court directs the release of the detenu, a valid order directing his detention is produced, the court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the court can direct the release of the petitioner. The learned judges point out that the analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings has no application to proceedings in the nature of *habeas corpus* where the court is concerned solely with the question whether the applicant is being lawfully detained or not."

To revert to the first case, I cited, *Greene's* case, in this case there was the Home Secretary's order but a serious mistake was made by the Advisory Committee to whom the appellant made objections, the mistake being a failure to give the appellant the correct reasons for his detention and it was held that however reprehensive the mistake might be, it did not invalidate the order of the Home Secretary. In the words of Lord Macmillan at page 297

"..... the production of the Secretary of State's order, the authenticity and good faith of which is in no way impugned, constitutes a complete and peremptory answer to the appellant's application. It justifies in law his detention in the absence of any relevant challenge of its validity, and there is no such challenge."

The order nisi is discharged. It means that the detenu will now return to custody.

Order accordingly.

Solicitors: *Karpal Singh, Wong & Co.*

DAVIES v. MADO'S ENTERPRISE & ORS.

[O.C.J. (Syed Othman J.) December 16, 1973]
[Johore Bahru — Civil Suit No. 228 of 1970]

Damages — Personal injuries — Chemical burns leaving scars and keloid formation — Assessment of damages.

In this case the plaintiff was involved in a road accident and as a result of being pinned under a landrover he suffered chemical burns, which after treatment left scars and keloid formations. The defendants and the third party agreed that they were equally to be blamed for the accident and the question was as to the amount of general damages that should be awarded for the injuries.

Held: in all the circumstances of this case the sum of $12,000 would be appropriate and reasonable.

Cases referred to:-

(1) *Chai Koi Fah & Ors.* v. *Lai Choy Kang & Anor.* [1967] 1 M.L.J. xl.

(2) *Foulder* v. *Canadian Pacific Steamship Ltd.* [1969] 1 All E.R. 283.

CIVIL SUIT.

P. Suppiah (*Dr. R. S. Grewal* with him) for the plaintiff.

G. Tara Singh Sidhu for the defendants.

P. Devadas for the third party.

Syed Othman J.: The plaintiff, a soldier in the British army, was pinned under the landrover in which he had been travelling after a road accident at the 6th milestone Johore Bharu — Kota Tinggi road, Johore on 11th January, 1968. Petrol from the landrover spilled over his body. When he was rescued he had chemical burns. He was in hospital here and in Britain undergoing treatment for 140 days.

He brought an action for damages against the defendants who in turn brought in the third party claiming indemnity or contribution. The defendants and the third party now agree that they are equally to be blamed for the accident.

The question is how much should the court award to the plaintiff as general damages for his injuries. This is the first case of its kind here.

There are several medical reports on the plaintiff. They read in effect as follows. He was admitted to Johore Bahru hospital on 11th January, 1968 in an unconscious state and in respiratory distress. Emergency tracheostomy was done and he regained consciousness. He had chemical burns on his face, right arm, right thigh and front of trunk. He also had a small laceration of the right middle finger. The next day he was transferred to the British military hospital where further treatment was given. Burns toilet was performed. He had 40% mixed partial and full thickness burns involving face, neck, right shoulder and upper arm, axilla and trunk. Routine tracheostomy toilet was continued. At re-dressing on 23rd January, 1968 it was found that he had full thickness burns on ½ of back of neck, all deltoid and axilla, and patchy areas on the right supra scapular region. Patch skin grafting was done in February and March, 1968. After 60 days at the British military hospital he was sent to the United Kingdom for further treatment. In the United Kingdom he had an operation for the release of burn scar contracture of the right side of the neck and right axilla. There was no post-operation difficul-

ties and all the split skin grafts took well. He was discharged on 4th June, 1968 for sick leave and intensive physiotheraphy. He was seen again in February, 1969 as a follow-up for his plastic surgery and finally discharged from further follow-up.

According to one medical report, at present the scar is very well healed and there is no reduction in any movement of the right shoulder girdle or the right upper arm; although the plaintiff says that he cannot scratch his back quite as high up as he used to with his right hand or with his left, it is considered that this is to be within perfectly normal limits; he has complete movement of both shoulders and neck; there is no evidence of secondary scarring; the only problem appears to be cosmetic, and this is of minimal significance when he is clothed.

Counsel for the defendants and the third party are agreed to a common front in arguing on quantum. Mr. Tara Singh Sidhu, counsel for the defendants, on their behalf says that the injuries are quite well healed now and submits that $4,000 to $5,000 should be the proper amount considering that for one inch shortening of the leg the amount awarded is between $7,000 and $8,000, loss of any eye $12,000 to $13,000 and removal of a spleen $4,000. It is suggested that in assessing damages for injuries in the present case the court should follow what I would describe as the "comparative" method, *i.e.* the court should consider awards that have been made for other injuries and ask itself whether the plaintiff would prefer his injuries to those other injuries.

Mr. Suppiah for the plaintiff says that the amount to be awarded should be substantial, considering that in *Chai Koi Fah and Ors.* v. *Lai Choy Kang & Anor.*[1] for lacerated wounds, scars and keloid formations the court awarded general damages $10,000. In this case the first plaintiff, a good looking 26 years old nurse, sustained in a minor accident many lacerations. She was hospitalized for 16 days. She was later treated by a plastic surgeon to remove keloid formation on the healed lacerated wounds on her upper arm and left thigh. The surgeon made a trial incision of one of the keloids on the right upper arm and decided against interfering any further as he could not guarantee a recurrence of the same conditions at the site of the incision with the instruments and drugs at his disposal. He recommended that the operation should be done in Japan. In the course of his judgment the learned judge said, as appearing in the Note:

"The assessment of general damages presents some difficulty. The nature of the injuries sustained were superficial flesh wounds not resulting in permanent disability; but the wounds have left their imprint on the skin by keloid formation on the upper arm and left thigh. According to this plaintiff, the scars are a source of embarrassment to her. Having seen the scars which stand out like ridges on the skin, I can well understand the feeling of this otherwise attractive woman. A sense of frustration will continue indefinitely unless she is able to go abroad and undergo plastic surgery. I am unable to find an example of assessment of damages in any comparable case either locally or in England. In the course of her evidence this plaintiff said that she suffered from the embarrassment of people staring at her arms and that the embarrassment could only be avoided by wearing long sleeved dress which is a serious handicap for a woman in the prime of life."

I am aware that in this case the court was dealing with a young woman. Any mar to her skin would affect her physical attraction to the opposite sex.

Since the judgment there is now a decided case in England. I am grateful to counsel for both sides for having referred me to *Foulder* v. *Canadian Pacific Steamships Ltd.*[2] In this case, the plaintiff, a man in his fifties, was employed on board ship by the defendants. On completion of his duty when the ship was virtually moored at a landing stage, he decided to take a shower in the crew's quarters of the ship. He turned the shower on and almost at once entered and was scalded very seriously by water of temperature at least 150°F. He was, as a result, absent from work for nearly a year.

Caulfield J. at page 288 found that twenty eight percent of his body was affected by burns and twenty percent namely 10/14th of the scalded area was affected by deep burns. He also found that the plaintiff had suffered great pain, and had shocking scarring which called for a substantial sum of damages. He awarded £7,250.

From *Chai Koi Fah's* case and *Foulder's* case the courts do not appear to have considered the "comparative" method as suggested on behalf of the defendants and third party. From these authorities the courts have awarded substantial damages for injuries which result in ugly scars or keloid formations, or injuries caused by burns or scald, and in determining quantum the factors to be considered are, apart from pain and suffering, the keloid formations on the skin or the scars, their condition, location and area, and the extent they would embarrass the plaintiff.

In the present case after the accident the plaintiff was conscious under the landrover for 5 minutes before he passed out. He must have remained there for some length of time to get the chemical burns from the petrol, and he underwent treatment for nearly 5 months. The pain and suffering must have been intense.

He who was 25 years old at the time of the accident, says in evidence that he was a rugger captain for the unit team and played for the Johore team; he does not go for swimming (his other hobby) anymore, because the scars over his body embarrass him; after the accident he tried to play rugger but was taken off the field shortly after start of the game as the skin graft on the shoulder bled, and so did the scar on the right leg, the skin of which had been taken for the grafting over his shoulder; and he gets needle sensation over the shoulder during cold weather. I accept the evidence that there is this loss of amenity and additional suffering.

I have seen the scars over his body. At some areas they look to me like clusters of small keloids (overgrowth of scar tissues) and in some areas they are red in colour. Of keloid "Short Encyclopaedia of Medicine for Lawyers" by Levitt at page 231 says:

"Formation of keloid is a serious problem to the plastic surgeon in that an operation which has been performed purely for cosmetic purposes may result in a far more unsightly appearance than before the operation. Keloids are likely to recur after excision."

As far as I can see if not for the successful skin grafting on some areas, the condition of the affected parts of the body can be worse. The remaining scars still look to me to mar the appearance, especially the scars below the right ear, over the right shoulder and under the armpit. They bear burn marks. They do not look to me to be sightly, and I have no doubt that they are a source of embarrassment to the plaintiff, particularly when he undresses. Some are shiny and look like healed scars of Hanson's disease. The scars below the ear are always exposed and would be the subject of stares from onlookers. In all the circumstances of this case, in my considered opinion, the sum of $12,000 would be appropriate and reasonable sum of damages.

Special damages have been agreed upon at $1,600. Interest on general damages at 6% and special damages at 3% from 24th August, 1970, the date of service of the writ. Costs to the plaintiff.

Order accordingly.

Solicitors: *Saleh, Suppiah & Singh; Khoo & Sidhu; Devadas & Co.*

CHAN PENG FOOK v. KAN PAK LEE

[O.C.J. (Hashim Yeop A. Sani J.) February 16, 1974]
[Seremban — Civil Suit No. 167 of 1970]

Road Traffic — Road accident — Negligence — Possibility of danger — Special duty to take precaution — Contributory negligence — Highway Code, s. 25 — Road Traffic Ordinance, 1958, s. 59(4).

Damages — Leg — 1/6" shortening — Abrasions.

The plaintiff, a carpenter, was involved in an accident and was admitted to hospital with the following injuries: abrasions on most of the right side of his body, i.e. over his right forehead, right elbow etc. and a fracture at the midshaft of the tibia on left leg resulting in shortening of 1/6th of an inch.

There was evidence in this case that the defendant had in fact seen the plaintiff walking in an unsteady manner about 3 ft. from the edge of the road. When he first saw the plaintiff the defendant was about 40 - 50 yds. away. He admitted that he did not slow down until the plaintiff was 10 - 15 ft. away. He swerved to the left when the plaintiff was crossing the road and was near the centre of the road.

Held: (1) when the possibility of danger was apparent there was a special duty created by section 25 of the Highway Code to take precautions and the failure to take them was negligence;

(2) on the question of contributory negligence, the evidence showed that the plaintiff attempted to cross the road before first ensuring that the road was clear and therefore the blame should be apportioned — *viz* defendant ¾ and plaintiff ¼;

(3) general damages in this case should be classified under two headings;

(i) fracture of midshaft of the left tibia resulting in shortening of 1/6th of an inch should be awarded $3,000/-;

(ii) the remaining injuries, i.e. abrasions, should be awarded $1,200/-.

Liability based on ¾ against the defendant.

Case referred to:-

(1) *Nance* v. *British Columbia Electric Railway* [1951] A.C. 601 at p. 611.

CIVIL SUIT.

Foo Nyong Tiam for the plaintiff.

Miss Kandiah for the defendant.

Hashim Yeop A. Sani J.: This is a claim under the Civil Law Act, 1956 for damages arising from injuries sustained in a road accident between motor car No. JE 8793 driven by the defendant and the plaintiff, a pedestrian. The accident occurred on 10th February, 1970 at Jalan Tembak, Seremban. At the time of the accident both the defendant and the plaintiff were proceeding in the direction of Jalan Temiang.

As is usually the case there are two versions of the accident. The plaintiff's version is that while he was walking about 1 ft. from the edge of the road on left side of Jalan Tembak towards Jalan Temiang, he was knocked down by the plaintiff's car from behind. It would appear that from the way the plaintiff demonstrated to the court how the accident occurred it was the plaintiff's case that he was in fact hit by the defendant's car directly from the rear.

The other version of the accident is that of defendant and his witness one Chan Siew Ming, a passenger in defendant's car at the material time. According to the defendant he was driving along Jalan Tembak when he saw the plaintiff walking "unsteadily" in front about 40-50 yards ahead of him in the same direction. When he first saw him the defendant said the plaintiff was about 3 ft. from the edge of the road and he hooted his car horn. When the plaintiff was about 10-15 ft. away from the defendant the defendant saw the plaintiff wanting to cross the road from the left to the right. The defendant said he tried to avoid the plaintiff by swerving to the left as the plaintiff was already on the middle of the road but his car hit the plaintiff on the offside front portion of the car. According to the defendant he was travelling at about 20 miles per hour as the road was not a metalled road and when he saw the plaintiff about 10-15 ft. away he slowed down to a little less than 20 miles per hour. According to Chan Siew Ming. the passenger in defendant's car, when the plaintiff was about 14 ft. ahead of them the defendant sounded his horn. At that time the plaintiff was already about 1/3rd across the road. When the plaintiff heard the sound of defendant's horn he tried to turn around probably to return to the left side of the road at which time the defendant swerved to the left to avoid him and the collision occurred.

Looking at the injuries sustained by the plaintiff as described in enclosure (10) of the Agreed Bundle of Documents, the version of the defendant would appear to be more probable. When the plaintiff was examined by the Medical Officer, General Hospital, Seremban, soon after admission to Hospital, abrasions were found mostly on the right side of the plaintiff, *i.e.* over his right forehead, right elbow etc. and a fracture was seen at the midshaft of the tibia on left leg, all these injuries being consistent with the knock from the left side of the plaintiff and upon impact he fell on his right side contrary to plaintiff's own version.

On the question of negligence the conduct of the defendant at the material time must be considered in the light of the existing law of negligence. Section 59(4)